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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/881,025	06/15/2001	John A. Tomlin	Y0R920000712US1	7835
7590	10/20/2004		EXAMINER	
McGuireWoods, LLP 1750 Tysons Boulevard, Suite 1800 McLean, VA 22102-3915			BORISSOV, IGOR N	
			ART UNIT	PAPER NUMBER
			3629	

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)	
09/881,025	TOMLIN ET AL.	
Examiner	Art Unit	
Igor Borissov	3629	MU

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE .03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 02 August 2004.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-6 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-6 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____ .

DETAILED ACTION

Response to Amendment

Amendment received on 8/02/2004 is acknowledged and entered. Claims 2 and 5 have been amended. Claims 1-6 are currently pending in the application.

Claim Objections and Objections to Specification have been withdrawn due to the applicant's amendment.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mikurak (US 6,671, 818).

Mikurak teaches a method and system for cost optimization for bandwidth market in e-commerce supply chain network environment, comprising:

Claims 1 and 4. Determining characteristics of the class family of services based on a service class basis, wherein an individual, and/or a class or other grouping of end-users may have different values (cost) (C. 46, L. 14; C. 36, L. 53-58); providing supply (price) and demand data for each known service class of end-users (C. 21, L. 37-48); running a computer model to forecast trends and predict when demand will exceed supply (C. 23; L. 19-21); monitoring bandwidth wholesale cost (C. 279, L. 15-22); and taking appropriate action to keep bandwidth supply within agreed targets for each service class so as to either

keep ahead of demand or slow sales, thereby maximize profits (C. 46, L. 20-27; C. 17, L. 1-12; C. 20, L. 44 – C. 21, L. 14).

Mikurak does not specifically teach that providing supply (price) and demand data for each known service class includes providing supply (price) and demand curve data which determines an arrival rate for each customer.

However, it is noted that there is no indication in the specification that said terminology provides the advantage over the prior art. Without such indication, it appears that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Mikurak to employ any relevant terminology defining a provision of supply (price) and demand data for each known service class of end-users.

Claims 2 and 5. Mikurak teaches statistical tools for optimizing pricing and capacity for bandwidth management using the computer (C. 17, L. 1-12; C. 20, L. 44 – C. 21, L. 14; C. 294, L. 55-58). As to specifics of the statistical tools, it is old and well known in the art to use various statistical tools for price optimization.

Claims 3 and 6. Said method for optimizing pricing capacity for bandwidth management including running modeling software (C. 20, L. 44- C. 21, L. 14). Information as to *non-linear* software is non-functional language and given no patentable weight. Non-functional descriptive material cannot render non-obvious an invention that would otherwise have been obvious. See: *In re Gulack* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) *In re Dembiczak* 175 F.3d 994, 1000, 50 USPQ2d 1614, 1618 (Fed. Cir. 1999). The specific example of non-functional descriptive material is provided in MPEP 2106, Section VI: (example 3) a process that differs from the prior art only with respect to non-functional descriptive material that cannot alter how the process steps are to be performed. The method steps, disclosed in Mikurak would be performed the same regardless of the type of modeling software used.

Response to Arguments

In response to the applicant's argument that the Declaration overcomes Mitra et al, the examiner points out that the effective date of Mikurak, which was listed in the Form PTO-892 provided in the first Office Action, is November 22, 1999.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Igor Borissov at telephone number (703) 305-4649.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, John Weiss, can be reached at (703) 308-2702.

Any response to this action should be mailed to:

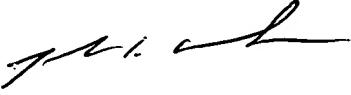
Commissioner of Patents and Trademarks
Washington D.C. 20231

or faxed to:

(703) 872-9306 [Official communications; including After Final
communications labeled "Box AF"]

Hand delivered responses should be brought to Crystal Park 5, 2451
Crystal Drive, Arlington, VA, 7th floor receptionist.

IB
10/17/2004


JOHN G. WEISS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600